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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,921	09/22/2003	Ioana M. Rizoiti	BI9100CIPCON	9901
33197	7590	02/20/2009		
STOUT, UXA, BUYAN & MULLINS LLP 4 VENTURE, SUITE 300 IRVINE, CA 92618			EXAMINER SHAY, DAVID M	
			ART UNIT	PAPER NUMBER
			3769	
			MAIL DATE	DELIVERY MODE
			02/20/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/667,921

**Applicant(s)**

RIZOIU ET AL.

**Examiner**

david shay

**Art Unit**

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on January 22, 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 39-48, 52-59, 65-69 and 76-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-48, 52-59, 65-69 and 76-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date January 22, 2009.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 21, 2008 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 39-46, 48, 52, 53, 65-68, 76, 77, 79, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizoïu et al (WO '928) in combination with Leckrone, and the admitted prior art of employing sterile fluids, since this prevents infection when operating on internal tissue; constructing the device from medical grade plastics, since this is a notorious material for medical devices; and constructing the device of stainless steel, since this is a notorious material for medical devices and is inert. Rizoïu et al (WO '928) teach a tissue removal device and method with hydrokinetic energy generated by the claimed lasers and using water, epinephrine and/or anesthetic as the fluid. Leckrone teaches having the zone wherein ablative energy used to act upon the tissue to be removed interacts therewith beyond the distal end of the cannula. It would have been obvious to the artisan or ordinary skill to employ the hydrokinetic energy generators and steps and fluids of Rizoïu et al (WO '928) in the method and device of Leckrone, since Leckrone requires no particular laser and since the claimed fluids are equivalent and or compatible with water when generating the hydrokinetic energy, as taught by Rizoïu et al (WO '928); or to employ the cannula delivery system and steps of Leckrone in the device and method of Rizoïu et al (WO '928), since Rizoïu et al (WO '928) teaches that the device and method can

be used on many kinds of tissue and can include many different types of instruments; and in either case, to employ sterile fluids, since this prevents infection when operating on internal tissue, official notice of which has already been taken; to construct the device from medical grade plastics, since this is a notorious material for medical devices, official notice of which has already been taken; and to construct the device of stainless steel, since this is a notorious material for medical devices and is inert, official notice of which has already been taken, any disruptive forces will propagate in all directions and act on any tissue which is in the cannula, thus producing a device and method such as claimed.

Claims 47, 54-59, 69, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizoju et al (WO '928) in combination with Leckrone, and the admitted prior art of employing sterile fluids, since this prevents infection when operating on internal tissue; to constructing the device from medical grade plastics, since this is a notorious material for medical devices; and to constructing the device of stainless steel, since this is a notorious material for medical devices and is inert as applied to claims 39-46, 48, 52, 53, 65-68, 76, 77, 79, and 80 above, and further in combination with Kittrell et al. Kittrell et al teach a tissue removal device with imaging capabilities. It would have been obvious to the artisan of ordinary skill to provide the infrared imaging device of Kittrell et al. in the device of Rizoju et al (WO '928) in combination with Leckrone since this would enable the surgeon to assure that the tissue is kept at a safe temperature, since this will minimize the damage to nerves and blood vessels, thus producing a device such as claimed.

Applicant's arguments filed November 21, 2008 have been fully considered but they are not persuasive. The arguments are not persuasive for the reasons set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson, can be reached on Monday through Friday from 7:00 a.m. to 3:30 p.m. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/david shay/

Primary Examiner, Art Unit 3769